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**Notice of Allowability**

Application No.

10/828,599

Examiner

Jerrold Johnson

Applicant(s)

NG, ANDY

Art Unit

3728

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to telephonic interview/examiner's amendment 27 April 2007.
2. ☒ The allowed claim(s) is/are 1-14.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Eric LaMorte on 27 April 2007.

The claims 1 and 10 of the application have been amended as follows:

1. (amended) An assembly, comprising:

a first plurality of chalk of a first diameter;

a second plurality of chalk of a second diameter~~[[.]]~~ that is less than said first diameter;

a first container having side walls and an open top, wherein said first container is sized to receive said first plurality of chalk therein, and the first plurality of chalk are disposed within the first container;

a second container sized to receive said second plurality of chalk therein, wherein the second plurality of chalk are disposed with the second container so as to be separated from the first plurality of chalk;

a pocket structure extending from an external surface of one of said side walls of said first container, wherein said pocket structure is sized to selectively receive and retain said second container therein, and to allow the removal of the second container from the first container.

10. (amended) A method of packaging two sets of chalk of different diameters, said method including the steps of:

providing a first container sized to receive a first set of said two sets of chalk, wherein the first set of chalk has a first diameter and said first container has a side wall and a pocket structure that extends outwardly from an external surface of said side wall;

providing a second container sized to receive a second set of said two sets of chalk, wherein the second set of chalk has a second diameter that is less than said first diameter;

placing said first set of chalk in said first container;

placing said second set of chalk in said second container so that the second set of chalk are separated from the first set of chalk; and

placing said second container in said pocket structure of said first container.

The following is an examiner's statement of reasons for allowance:

There are two references in the prior art, Thomas US 4,616,748 and Axelrod US 5,860,518, which disclose containers having chalk (in the form of pastel sticks) of different diameters. Neither of these references specifically teaches two different sized sets of chalk, nor the separation of these two sets into different containers. The different sized chalk in both of these references appears to be an incidental disclosure. Additionally, the only "pockets" that either reference discloses are within the interior of the main container. Accordingly, to meet the claims using either of these two reference as a base reference, a first reference would need to be found that sets forth separating two sets of different sized chalk each into a respective container and the necessity of doing so (the motivation). No reference with this teaching was found. Additionally, a second reference would also need to be found that provides a basis for modifying either of these two references by placing a container having a second set of elements into a pocket disposed on the exterior surface of the first container, within which a first set is disposed. The Examiner has found no reason to apply the teachings of the references that do disclose a separate container disposed on the exterior surface of a first container to either of these two references.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JDJ

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700